United States District Court

Sauthern	DISTRICT OF _	New Y	
Frank Halcond			ECF CASE
•	SUM	IMONS IN A	CIVIL CASE
v. Dr. Ronald D. Blatt and Ed Side Gynecology Services, =	ist Of	NUMBER:	2579
TO: (Name and address of defendant) Dr. Ranald Gynecology 1171 Valle	1 D. Blatt a 1 Services, I 24 Road	ind Easts	one.
YOU ARE HEREBY SUMMONED and req Kodn 40 So 61 B	an, Connection Connection of Connection Conn	PLAINTIFF'S ATT Si LLP Sim FL	
an answer to the complaint which is herewith served summons upon you, exclusive of the day of service the relief demanded in the complaint. You must also of time after service.	 If you fail to do so 	, judgment by defa	
J. MICHAEL McMAHON		MAR - 4	4 2005
CLERK COSCO (EY DEPUTY CLERK	DATE		

	RETURN OF SER	RVICE	
Service of the Summons and C	Complaint was made by me1	DATE	
NAME OF SERVER (PRINT)	omplaint was made by me	TITLE	
Check one box below to indicate	e appropriate method of service		
Served personally upon the	e defendant. Place where served	·	
Left copies thereof at the d	lefendant's dwelling house or usu	al place of abode with a person of sui	table age and
Returned unexecuted:			
· · · · · · · · · · · · · · · · · · ·			
Other (specify):			
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RAVEL	STATEMENT OF SERVI	CE FEES TOTAL	
RAVEL		TOTAL	
I declare under pen information contained in the	DECLARATION OF S	TOTAL	foregoing
I declare under pen	DECLARATION OF S nalty of perjury under the laws of the Return of Service and Statement	TOTAL ERVER The United States of America that the structure of Service Fees is true and correct.	foregoing
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⁽¹⁾ As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

SOUTHERN DISTRICT OF NEW YORK	Y
FRANK HALCOND, Plaintiff,	COMPLAINT JURY TRIAL DEMANDED
-against-	
Dr. RONALD D. BLATT & EAST SIDE GYNECOLOGY SERVICES, INC.	
Defendants.	X

PARTIES

- Plaintiff, FRANK HALCOND, is a former employee of Dr. RONALD D.
 BLATT and EAST SIDE GYNECOLOGY SERVICES, INC.
- 2. Plaintiff, FRANK HALCOND at all times hereinafter mentioned was, and still is, a citizen of the United States of America, and a resident of the State of New York.
- 3. Defendant, Dr. RONALD D. BLATT, is the principal officer of EAST SIDE GYNECOLOGY SERVICES, INC., and as such is empowered with the responsibility of managing, running and otherwise overseeing the affairs of said corporation and otherwise has such powers, responsibilities and duties associated with that office.
- 4. Defendant, EAST SIDE GYNECOLOGY SERVICES, INC., is a corporation duly organized and doing business under the laws of the State of Connecticut, with its offices located at 1171 Valley Road, New Canaan, Connecticut 06840.

JURISDICTION

5. The court has jurisdiction pursuant to 28 U.S.C. § 1331 as this action arises under the laws of the United States, specifically the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq.

VENUE

6. The venue of this action is proper pursuant to 28 U.S.C. § 1391(b) as this action is brought in the judicial district where defendants reside and where a substantial part of the events or omissions giving rise to these claims occurred.

ALLEGATIONS

- 7. On or about June 12, 2001, plaintiff and his then-employers, defendants Blatt and Eastside Gynecology, entered into an agreement ("Agreement") which provided that plaintiff's gross salary would be one hundred nineteen thousand four hundred twenty-seven dollars (\$119,047.00). See Exhibit 1.
- 8. Pursuant to the Agreement, defendants assented to adding twenty five percent (25%) to said salary, or twenty-nine thousand eight hundred fifty-seven dollars (\$29,857.00), for purposes of depositing same into a pension account ("Plan") for his benefit.

 See Exhibit 1.
- 9. Said Plan was at all times administered by Fidelity Brokerage Services, subject to defendant Blatt's direction. <u>See</u> Exhibit 2.

- 10. Notwithstanding the terms of the Agreement, defendants failed to make accurate or timely contributions to the Plan.
- 11. Specifically, defendants did not *add* an additional twenty-five percent (25%) to plaintiff's salary for pension purposes in accordance with the Agreement. Instead, defendants took said twenty-five percent (25%) from plaintiff's existing salary-- in violation of the Agreement.
- 12. Defendants additionally failed to make even that deficient contribution to the Plan account until several months later.
- 13. Plaintiff had multiple conversations with the defendants, commencing in 2002 and continuing thereafter regarding their failure to make the requisite pension contributions in accordance with the Plan.
- 14. While defendants assured plaintiff that the proper amounts would be deposited into his pension account, no such deposits were ever made.
- 15. In or about March 2002, plaintiff's salary was increased to one hundred eighty-two thousand dollars (\$182,000.00) based upon a restructuring of his world load and substantial increase of his employment obligations.
- 16. The Agreement remained in place concerning the employer's obligation to add an additional twenty-five percent (25%) of plaintiff's salary, or forty-five thousand dollars (\$45,000.00) to the Plan.
- 17. Defendants, however, failed to make the requisite contribution of twenty-five percent (25%) to plaintiff's salary for pension purposes in accordance with the Agreement.
 - 18. Although monies were being taken from plaintiff's salary, no pension

contributions were being made.

- 19. No aspect of the Agreement between plaintiff and defendant concerning defendants' obligation to add a twenty-five percent (25%) contribution to plaintiff's salary for pension fund purposes was ever waived or otherwise modified.
- 20. Defendants at all times hereunder maintained an obligation to fulfill their commitment to plaintiff in all particulars.
- 21. Plaintiff continued to have multiple conversations with the defendants, after receiving this salary increase regarding their failure to make the requisite pension contributions in accordance with the Plan.
- 22. While defendants continued to assure plaintiff that the proper amounts would be deposited into his pension account, no such deposits were ever made.
- 23. Plaintiff requested an accounting from defendants regarding the contributions that they were required to make to his pension fund versus the *actual* contributions that were made during the course of his employment.
 - 24. No such accounting has been provided.

FIRST CAUSE OF ACTION

ERISA § 502(a)(1)(B)

- 25. Plaintiff repeats each and every allegation contained paragraphs 1-24 herein.
- 26. Defendants intentionally, wilfully and knowingly failed to provide contributions to plaintiff's pension account in accordance with their agreement. Thus, plaintiff seeks to recover benefits due to him under the terms of his pension plan and to enforce his rights

under the terms of the plan pursuant to ERISA's civil enforcement provisions.

SECOND CAUSE OF ACTION

ERISA § 409

27. Plaintiff repeats each and every allegation contained in paragraphs 1-26

herein.

28. Defendants, as fiduciary of plaintiff's pension plan, breached the

obligations imposed upon them by ERISA's provisions by intentionally, wilfully and knowingly

failing to provide contributions to plaintiff's pension plan in accordance with their agreement.

Thus, plaintiff seeks redress from defendants for his failure to comply with ERISA's fiduciary

obligations.

WHEREFORE, the plaintiff demands a jury trial, and seeks one hundred fifty

thousand dollars (\$150,000.00) in compensatory damages, requests attorney fees, and asks for

such further relief as to this Court shall seem just and proper.

Dated: New York, New York

February 11, 2005

Respectfully submitted,

KOEHLER & ISAACS LLP

Attorneys for Plaintiff

61 Broadway, 25th Floor

New York, New York 10006

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06/12/2001 Case 1:05-cv-02579-TPG Document Filed 03/04/05 **EXHIBIT** CHIPETINE, NEU & SILVERMAN, LLP **ACCOUNTANTS & AUDITORS** Phone (516) 248-9300 310 Old Country Road Garden City, NY 11530 Facsimile (516) 248-8711 www.chipetine.com June 12, 200 Frank Halcond Eastside Gynecology 225 East 64th Street, C-2 New York, NY 10021

Dear Frank:

The annual numbers based on \$156,000 are as follows:

Gross		\$119,427
Employer paying on your behalf:		
FICA (\$80,400 x 6.2%)	\$ 4,984	
Medicare (1.45%)	1,732	И
Pension (\$119,427 x 25%)	<u> 29.857</u>	36,573
Total	4	\$156,000

In as much as we are beginning in June, the social security (FICA) will be different as the deduction is on the first \$80,400. Annually, however, it will even out.

A used deductions of 20% Federal; 5% State and 4% City. Please show the numbers to your accountant as I can adjust them to whatever works for you.

I should point out to you that there is a small benefit to you and it has to do with the pension. As a self-employed individual you were limited to a pension contribution of 20%; an employee, however, can have a much as 25%.

If your accountant wants to speak directly to me, please tell him to call me.

Sincerely,

Bernard Chipetine

BC:jn

The Fidelity Retirement Plan

GARDEN CITY GAR 117

Money Purchase Pension Plan Contribution Form

Complete a form for each participant who wishes to trade securities or FundsNetwork® mutual funds in a plan account through Fidelity Brokerage Services LLC.

Section 1 should be completed and signed by the Employer, Section 2 completed by the Participant and signed by both the Participant and the Plan Administrator, and Section 3 completed by the Participant.

Additional participants can use photocopies of this form, but all signatures (from both employers and participants) must be original. Return your forms with a check payable to Fidelity Investments to initiate trading on your account. The minimum initial investment is \$500. Use the enclosed envelope, or mail your forms to Fidelity Investments, P.O. Box 770001, Cincinnati, OH 45777-0001

OH 45277-0001.	₽		•			
1 RETIREMENT PLAN INFORMATION TO BE CO	MPLETED AND SIGNED BY TH	E EMPLOYER				
A. Type of Business: Unincorporated X Incorporated	Plan Administrator Address 1171 Valley Road					
B. Please complete the following information:	New Canaan		T 06840			
Business Name <u>Eastside Gynology Services</u> , In	City.	Sta Standard Pension Plan	nte Zip			
Employer Tax I.D. 1 3 - 4 1 6 6 6 9 4 2	already been filed to	establish the plan	n for your business?			
(Do not use a Social Security number.)	☐ Yes ☐ No If yes,					
All forms must contain your Employer Tax I.D. Number. Do not use your Social Security number. If you need to obtain a Tax I.D. Number, please call the IRS at 800-829-1040.	If no, the employer must complete a Money Purchase Application. T-1 3 5 0 5 6 2 6 8					
Name of Plan Administrator Ronald D. Blatt	Employer Money Purch	ase Plan Account Numb	er			
(The Plan Administrator can be the employer or a person designated by the employer who is responsible for administering the Keogh in accordance with the Plan Document.)	Signature of Employer	n	3/26/02 Date			
2 PARTICIPANT INFORMATION TO BE COMPLETED A	ND SIGNED BY BOTH THE PAI	RTICIPANT AND PLAN AD	MINISTRATOR:			
A. Please tell us about yourself. Your Name Frank Halcond	C. Financial Inform We are required by inc See Supplemental Info	lustry regulations to c				
Date of Birth 3 22 40 month/day/year	Investment Objective	Annual Income	Estimated Net Worth			
Permanent Street Address 935 Flint Ct	(choose one) X 1 Preservation of Capital	(from all sources)	(excluding residence)			
Valley Cottage, NY 10989	Income	\square_1 Under \$20,000 \square_2 \$20,000-\$50,000	1 \$30,000-\$50,000			
City State Zip	6 Aggressive Income	\$50,001-\$100,000	\$50,001-\$100,000			
Social Security Number 133-30-2490	∐₃ Growth ´□₄ Speculation	□ ₄ Over \$100,000	∐ ₃ \$100,001-\$500,000 X ₄ Over \$500,000			
Daytime Phone (212) 308-4988	Estimated Liquid Net Wort	h Federal Tax Bracket	,			
E-mail Address	□ ₁ Under \$15,000	□ ₁ 15%				
Country of Citizenship 🗵 U.S. 🗌 Other	□, \$15,000-\$50,000 □, \$50,001-\$100,000	X 228% □ 3 Over 28%				
Country of Tax Residence 🕱 U.S. 🗌 Other	X \$100,001-\$500,000		• •			
Occupation Physician	□ ₄ Over \$500,000					
B. Affiliations. Are you affiliated with or employed by a stock exchange or nember firm of an exchange or the NASD,* a municipal securities proker-dealer, or by Fidelity? NO Yes, with	D. Account Features Options. If you would li account, you must comp available online at Fidel	ke to trade options in lete a Fidelity Options				
Are you a "control person" or "affiliate" of a public company						
as defined in SEC Rule 144? This would include, but is not necessarily limited to, 10% shareholders, policy-making executives, and members of the Board of Directors. NO			· · · · · · · · · · · · · · · · · · ·			
Yes. Trading Symbol:						
Company:						

^{*}If yes, you must include a letter of account approval from your Compliance Officer with your account application and indicate your employer's company name and address above. Notification of your intent to open an account will be sent to your employer in accordance with the current regulations.

Profit Sharing Plan Contribution Form (continued)

E. Participant Agreement. Please sign here to open your Fidelity Retirement Plan through Fidelity Brokerage Services LLC (FBS)

I have received and read the Prospectus for Fidelity Cash Reserves, the money market fund to be used to hold assets of my Profit Sharing account pending other investment instructions. I understand that it is my responsibility to read the prospectus for any mutual fund into which I

Although Fidelity Management Trust Company is a bank, I recognize that any investment company (e.g., any mutual fund/money market fund) in which my Retirement Plan may l tompany (e.g., any mutual und/money market mind) in which my ketirement Plan may leavested is not a bank and is not backed or guaranteed by any bank or insured by the FDI This agreement shall be construed, administered, and enforced according to the laws of the Commonwealth of Massachusetts, except as superseded by federal law or statute. The Fidelity Retirement Account Customer Agreement shall inure to the benefit of Fidelity's successors and assigns, whether by merger, consolidation or otherwise. Acceptance will be evidenced by a Letter of Acceptance can be up to consolidation.

purchase or exchange. I also understand that my, my instructions as given from time to time to FI in accordance with applicable rules and regulati issuers of securities if securities are held in my a mation unless I do not consent to disclosure and I hereby certify under penalties of perjury that m Section 2) is correct. I also certify that I am of le I have read the Fidelity Brokerage Commission understand that certain brokerage fees and climay change this fee schedule from time to the	Account will be invested in a 3S. I understand that, upon is ons, Fidelity will disclose my ecount so that I can receive is if notify FBS in writing that I y Social Security number (as gal age to enter into this agre on Schedule and Schedule harges apply to this accour	eccordance with ssuer's request mame to important infor- do not consent indicated in ement. of Fees and it. The Trustee	Managemer I HAVE RE FIDELITY MENT GO AND AS M GOVERNE EDGE REC	ice sent by, or on at Trust Company at Trust Company and UNDERST. BRÖKERAGE R VERNING THIS IAY BE AMENDID BY A PRE-DISCEIPT OF THE POOPEN OF T	, and Nation: AND AND A ETIREMEN ACCOUNT ED FROM T PUTE ARBI RE-DISPUT	al Financial AGREE TO T ACCOU T AS IS CU IME TO T IRATION E ARBITR	Services BE BOU NT CUS' PRENTI IME. TH AGREEM ATION	LLC. IND BY T. IOMER A LY IN EFF IS ACCOL IENT: I A	HE GREE- ECT UNT IS CKNOV
x Cho 1	L 1/12	17,000	V-gg	MA C	21/1	•			
Participant's Signature	Date	1 W.5	Plan Adm	inistrator's Signa	ature)	J. –	-	Date	
1 PARTICIPANT BENER If this is your first Fidelity Retirement Plan (I primary and contingent beneficiary sections	Keogh), or if you are chang	ging the designa	ation of the be	neficiaries previou	isly submitte	d to Fidelit	y, please	complete l	ooth the
Designation with Fidelity and you are now fill out the beneficiary designation section be to receive payment of the value of my Fidelity shall be made in equal shares to my primary that beneficiary's designated share shall be divprimary beneficiary, the spousal consent primy death, I hereby specify that the balance is the rules of succession described above under Note: If beneficiary is a trust, please provide the	low unless you are changing the circument Plan account(so peneficiary(ies) who survive ded equally among the suportion of this form must to be distributed to my cor Primary Beneficiary.	ng the original of upon my deates me. If a perce rviving primary oe signed in the ntingent benefic	designation. I h. If more that ntage is indicat beneficiary(ie e presence of ciary(ies) listed	hereby designate to n one person is na ted and a primary s). I understand to a notary public. I l below. Payment	he person(s) med and no beneficiary(i hat if I desig if there is no to contingen	named beloshare perce es) does no mate anyon primary be t beneficiar	ow as prin ntages are ot survive incother the neficiary lites will be	nary benef indicated, me, the pe han my sp iving at the made acc	iciary(ie: , payme: rcentage oouse a: e time o
Primary Beneficiaries (Please pri					n .	CD: .l.		.	
(Il trust, please give name, address, and trustee's name	Last Name e.)	Social Securit	y Number	Share %		of Birth/ of Trust	Spouse	Beneficiary Other	is Trust
l Frank	Halcond, Jr	. 065-8	30-4431	100	12 /_	<u>29/ 75</u>		X	
2				Total = 100%					
Contingent Beneficiaries			-	1001-1001					
1		·		· · · · · · · · · · · · · · · · · · ·	/				
2.	 `.		•	Total = 100%					
I understand that if I have not previously design do not have a surviving spouse, my estate. I am accepts another form with a later date. The ben Trust Company (or any successor trustee ap Money Purchase Plans, and shall replace all	aware that this form become eficiary information provi pointed pursuant to t <u>he</u> te	es effective wher ded herein sha erms of such Pl	delivered to, all apply to all and an acts as truing of my Fide	ind accepted by, Fi my Fidelity Retiro stee, including bo	delity and wil ement Plan a oth mutual fi	l remain in ecounts for and and bro	effect unti which F	l Fidelity re idelity Ma	ceives a nageme
Participant's Signature	· · · · · · · · · · · · · · · · · · ·	, F		nt's Full Name	`			Date	
Spousal consent: Please indic. I hereby consent to the designation of the be paid amounts that would otherwise be	primary beneficiary(ies)] ficiary(ies)	listed at	oove to	
X			Χ						
Signature of Participant's Spouse	Dat	e	Notary Pub	lic				Date	
Fidelity Brokerage Services LLC. Accounts ca	rried by National Financia	al Services LLC	. Members Ne	w York Stock Ex	change, SIPC		ama na ama a la	enthern -	
Fidelity will complete t	thic caction	in the New York							
Fidelity Brokerage Acct. No.	inis section.								
Truenty brokerage Acct. No.	mis section.		Fidel		estments				

Accepted by Manager _

GARDEN CITY GAR 117

B. Age Requirement: _21_ years

re quirement will be 21.)

(Cannot be more than 21. Unless you indicate otherwise, the age

The Fidelity Retirement Plan

Profit Sharing Plan Application

Fidelity Profit Sharing Plan #001

To be Completed by the Employer. To open your Profit Sharing Plan at Fidelity, simply fill out this Application and the Plan Contribution Form. If you have any questions, or would like help in completing this Application, don't hesitate to call Fidelity toll free at 800-544-5373. This Application may only be used with the above Plan and Trust Agreement.

PLEASE GIVE US S YOUR BUSINESS.	OME INFORMATION ABOUT	3 WILL ALL EMPLOYEES NEED TO MEET THESE REQUIREMENTS?
Type of Business:		(Please check one):
☐ Self-Employed ▼ Inco	rporated	Yes, all Employees must meet the requirements listed above.
Eastside Gynology Business Name 225 East 64th Stree Business Address		☐ No, anyone who is an Employee on the Effective Date, regardless of whether he has completed the minimum service requirements, will participate immediately. All other Employees will need to complete the requirements.
New York,	NY 10021	
City	State Zip	4 Do you currently have or have you ever maintained another qualified plan? NO
(212) 308–4988 Business Phone: day	3	(If not, you may skip this section.)
() Business Phone: evening 13 - 4166942 Employer Tax I.D. Number		If you maintain or ever maintained another qualified defined contribution plan (other than Fidelity Money Purchase Pension Plan #002), or if you maintain a welfare benefit fund (as defined in Section 419(e) of the Code) or an individual medical account (as defined in Section 415(1)(2) of the Code) under which amounts are treated
•		as annual additions with respect to any participant in this plan, contributions to this plan will be cut back to avoid
Plan Year and Limitation	Year (Please check one):	excess contributions.
🗷 Calendar Year 🗌 Fiscal	Year ending	If you maintain or ever maintained a defined benefit plan,
that the Effective Date of yo the Plan Year chosen above, yet established on that date,	will be assigned. Please note our Plan will be the first day of unless your Business was not in which case the Effective Date your Business was established.	you must indicate below how you will apportion contributions so that <i>total</i> contributions (for all plans) do not exceed the limits described in Section 12.3. You must do this in a way that acts automatically without any further action by you. (See booklet for details.)
The Effective Date is:	/ 1 / 01	
month	day year	
2 Who is eligible 1	O PARTICIPATE IN THE PLAN?	
Please indicate the requiren become a participant.	nents for an Employee to	
A Length of Service (Pleas	se check one):	
Need not complete any	waiting period.	
Years of unintern completed (not more that	rupted service must be an two years)	
☐ Total of years of be completed (not more		

5

Please sign below to adopt your Plan.

Failure to fill out this Application properly may cause your Plan to be disqualified. Please review the form before signing it.

Fidelity will inform you of all amendments it makes to the prototype plan, or if it ever discontinues or abandons the prototype plan.

For Texas residents: Pursuant to Section 11.6 of the Fidelity Defined Contribution Retirement Plan and Trust Agreement, this agreement is governed by the laws of the Commonwealth of Massachusetts to the extent not preempted by federal law.

The Employer named below hereby **X** establishes or \square amends (Please check one. See booklet for details.)

Eastside Gynology Services, PC

(Name of Business)

Profit Sharing Plan consisting of the Plan and Trust Agreement and this Application as completed. The Employer appoints Fidelity Management Trust Company as Trustee and agrees to the fees set forth in the Plan Contribution Form, as amended from time to time. The Employer hereby directs the Trustee to invest in Fidelity Cash Reserves (or Fidelity Daily Income Trust if the services of Strategic Advisers, Inc. have been engaged with respect to this plan) any funds of the Plan transmitted without complete investment instructions.

Although the Trustee is a bank, neither Fidelity Distributors Corporation nor any mutual fund in which your Retirement Plan may be invested is a bank, and mutual fund shares are not backed or guaranteed by any bank or insured by the FDIC.

If you have ever maintained or later adopt any other qualified plan (including a welfare benefit fund as defined in Section 419(e) of the Internal Revenue Code, which provides post-retirement medical benefits allocated to separate accounts for key employees, as defined in Section 419A(d)(3) of the Internal Revenue Code or an individual medical account, as defined in Section 415(1)(2) of the Code) in addition to this plan (other than Fidelity Money Purchase Pension Plan #002) you will not be able to rely on the opinion letter issued by the National Office of the Internal Revenue Service to the Fidelity Plans as evidence that your plan is qualified under Section 401 of the Internal Revenue Code. You will need to file for your own determination letter with the appropriate Key District Director of the IRS if you wish to be sure that your plans are qualified.

This Application may be used only in conjunction with basic plan document number 01, the Fidelity Defined Contribution Retirement Plan and Trust Agreement.

SIGNATURE OF EMPLOYER

DATE

XOO /////////

12/30/01

Ronald D. Blatt

Name of person signing above (please print)

Fidelity Management & Research Company, the sponsor of this prototype plan, will inform you of all amendments it makes to the prototype plan, or if it ever discontinues or abandons the prototype plan. You may contact Fidelity Management & Research Company at:

Fidelity Management & Research Company 82 Devonshire Street Boston, Massachusetts 02109 Attention: Prototype Plans Telephone: 800-544-5373

